Memoriall for Mr Home of Billy

The Deceast Mr Ninian Home of Billy having acquired a Considerable Land Estate &c by two Severall Taillies being one in favours of George Home his Second Son of his first Marriage and the other heirs of Taillie therein named And the other in favour of Ninian Home his Eldest Son of his Second Marriage and the other heirs of Taillie therein named Gives to them the haill of his Estate Being to George and the heirs of Taillie the Estate of Billy and other Lands therein mentioned And to Ninian the Estate of Linthill and Severall other Lands therein also mentioned On the Taillie in favours of George &c was in his Fathers Lifetime Infeft in the haill Taillied Lands &c Survived his Father one year the Father Dying in December 1744 & he in the December 1745 And as Ninian Home the Institut by the Taillie of Linthill and the first Substitut by the Taillie of Billy Predecease the said Mr Ninian Home his Father The Memorialist by his Death was next heir of Taillie in both Estates And as such was Served heir of Taillie not only to George in Speciall But also to Ninian in Generall And was in May 1746 Infeft in the haill of the Estate of Billy Except the Lands of Billy and Billy Miln which hold Waird of the Duke of Douglas in which he is not yet Infeft And tho he was timeously Served Heir in Generall to his Brother German Ninian the Institut in the Taillie of Linthill And thereby has right to the Procury of Resignation contained in the Bond of Taillie of that Estate Yet from the Situation of the want of proper titles to the Lands Taillied &c has not yet been Infeft tho its now above Eight years Since his Father Dyed

By the foresaids two Bonds of Taillie the Heirs of Entaill are obliged Not to Suffer the Duties of Waird Marriage Non entries and Releif either Simple or Taxt Nor the Feu Blench and Few Duties nor other Publick burdens whatsomever payable out of the Lands and others Taillied (by not payment whereof the Samine may be Evicted) to run on unsatisfied for as the Same may be Evicted apprysed or Adjudged from them for any of the said Casualties or Publick burdens As also the Institut and whole Heir of Taillie Shall enjoy possess and Bruik the said Lands &c by virtue of

of the Taillie and Infeftments and Conveyances to follow
thereupon and by noe other right or title whatsomever
And the said Heirs of Taillie are obliged to obtain
themselves lawfully Infeft in the said Lands &c And
not to suffer the Same to Lye in Nonentry Declareing
thereby That if the said Ninian Home or any other of
the said Heirs of Taillie should act or Doe in the
Contrary of the particulars abovementioned or
any of them or neglect to fulfill the Conditions
abovementioned or any of them Then and in that
case all and Every one of such acts and Deeds with
all that shall happen to follow or may follow upon
shall be ipso facto void and null and of noe force
Strenth nor effect suchlyke and in the same manner
as if the said acts and Deeds had not been Done
nor Committed And also that the person soe
contraveening to fulfill the Conditions above
mentioned shall for him and himself alone & Descended
of the Taillie's body Immediatly upon the Contraven
:tion or failling to fulfill the said provisions
and conditions or any of them Lose and Tyne
all right and title he or she has or can pretend to
the said Lands &c: And the same in the case forsaid
shall ipso facto accresce to the next heir & Member
of Taillie thereby appointed to succeed albeit
Descended of the Contraveener's body suchlyke
and in the same Manner as if the person Contra
:veening were naturally Dead

Its already noticed that the Memorialist is infeft
in the haill of the Estate of Billy Except the Lands and
Mill of Billy which held Ward of the Duke of Douglas
And that he is infeft in noe part of the Estate of
Linthill as part of that Estate is upon the point of
right thereto not to be made up being as follows

The now Deceast Wm Home of Linthill his affairs
haveing gone into great Disorder He and his Creditors
entred into a Submission to Mr Carre of West Nisbet &
Mr James Home writer to the Signet now Sir James Home
Whereby they empowered the Arbiters not only to Determine
Controversies amongst the Creditors But also to Rank them
and Sell their Debitor's Estate And accordingly the said
Arbiters by their procedure on said Submission Ranked
the Creditors and appointed the Estate to be sold by Publick

Roup

Roup, one of the conditions of which Roup was that the
Purchaser was to rest satisfied with the progress of writs
[conform to an Inventary then Signed] and rights to said lands, X And the said Mr Ninian Home
Being the only offerer, He on the 15th December 1737
being the Day of the Roup was preferred to the purchase
And in obedience to the said Arbiters ye Decreet Arbitrall
Dated 28, 30 & 31st December 1737 the said Wm Home
late of Linthill Did Dispone to the said Mr Ninian Home
his heirs and Assigneys Heritably and Irredeemably All &
[Seven husband Lands] haill his whole lands and Estate of Linthill Viz: All and
haill the Seven husband lands In and about the Town of
Eymouth acquired from Alexander Home of Blackhill
[2 Husband lands] All and Haill the Two Husband lands in Eymouth
[2 Cottage & a half Cottage land] two Cottage lands and a half Cottage land there holden of
the Crown formerly belonging to John and Thomas
[2 Husband lands] Grays All and Haill other two Husband land in Eymouth
[3 Acres & a Cottage] three Acres land and one Cottage land there formerly
belonging to the said John and Thomas Grays holden of
~~Wedderburn~~ Wedderburn, All and Haill these Four Acres
[4 Acres of Land] of land in Eymouth sometime pertaining to John Brown
and Bessie Renton his spouse All and Haill one Tenement
[Tenement of Houses] of Houses and Yard of old pertaining to Walter Stewart
[6 Roods of Land] Portioner of Eymouth All and haill the six Roods of land
Lying in Hundlaw and Pope acre sometime pertaining
to Thomas Brown Portioner there All and Haill other
[6 Roods of land] six Roods of land in Gillieslaw Muir acquired from Thomas
Miller and Marion Renton his spouse All and Haill ane
[Acre of land Called Wardknows] acre of land Called Wardknows in Eymouth Loanhead All
[three Butts of land] and Haill three Butts of land lying in the Lyme field
Butts And All and Haill the lands of Eymouth Loanhead
[Eymouth Loanhead & Mains of Linthill] With the Mannor place and Mains of Linthill And all and
sundry houses Biggings &c And Faldyke All & haill the
[Corn Mill of Eymouth] Corn Mill and Miln Lands of Eymouth now Commonly
called Linthill Mill and the astricted Multures &c And
Sucklyke All and Haill the Teinds parsonage & vicarage
[Teinds of the haill lands] of the said lands Acres of land Roods of land & Mill lands
Together with the right of pasturage and of Fewall Feall and
[Pasturage on Commonty] Divot on the Common of Coldingham with free ish and
entry thereto This Disposition contains procury of
Resignation and Precept of Sasine On which precept
Mr Ninian is infeft 8th March 1738 And Mr Ninian
on the Creditors being paid by him of their severall parts
of the price has transmitted to him their Severall grounds of
Debt in Security of his purchase And on the 24th Octor
1738 the present Bond of Taillie of the sd Estate is
signed And the particular lands as above Exprest are thereby
Specially

Specially mentioned as also Some other Lands in which he Stood publickly infeft

Upon going throw the progress of the said Estate of Linthill It appears the said Jam Home Stood infeft in the lands & others aftermentioned viz:

Linthill Infeft in 2 Husband lands 2 Cottage lands & a half Cot land
2 husband lands & a tenement of houses

In the forsaids two husband lands two Cottage lands & a half On Charter of Adjudication under the Great Seall 12 Ap: 1703

Itt: in two husband lands and a tenement of houses by Charter of Adjudication 5th Septer 1702 from Eymouth

7 husband lands of Eymouth and Eymouth Mill & lands of these lands

Itt: upon a Precept furth of the Chancery as heir to Alexr Home his father In the Seven husband lands of Eymouth & Eymouth Mill and Mill lands & teinds of these lands 17 December 1737

Acre called Wards knows & 3 Butts of land

And from two Contracts of Excambion, betwixt Thomas Gray Brown of Heughhead and James Home one Dated 1654 and the other 1655 It appears that the Acre of land called Wardsknows And the forsaids three Butts of land were given by them to the said Thomas Gray in Excambion so that these are to be Deemed part of the said Thomas Gray his four husband lands in which Linthill Stands infeft as above

Not infeft in 12 Roods of land

As to Six Roods of land it appears Thos Gray had right to the forsd mentioned Six Roods, from Thos Brown and that he Stood infeft in the Same and obtained Confirmation from Wedderburn in 1666 But it Does not appear that Gray was ever either Legally or voluntarly Denuded of these But it appears That Alexr Home father to the said Linthill was infeft in the other Six Roods his Infeftment being Confirmed by Wedderburn 17 Nover 1666

Four Acres of land

It appears from a Decreet of apprysing att Alexr Home of Linthill his instance that he had apprysed from the said Thos Gray the forsds four Acres of land belonging to John Brown the apprysing is Dated 15 December 1675 But nothing can be found to instruct Linthill had right to the Eymouth Loanhead And Mains of Linthill and Teinds of the Same and Teinds of the forsds four husband lands

Eymouth Loanhead Mains of Linthill & Teinds of the four husband lands

As to the Mains of Linthill Its informed these lands were of old called Blackhill And that upon their being purchased by the sd Alexr Home in 1666 from Home of Blackhill they were ever Since under the

Ld.^r 2 Aprile 1753

Memorialls for Mr Home of Billy

I have Seen an Inventary of the progress and Rights of the Lands of Whitefeild, Hallbank, and Blackhills, and of the Lands of Swinewood & Hornandes; as the same stood in the person of George Home of Whitefeild before his Attainder, And I am humbly of opinion That the progress was Sufficient in his person upon which a Purchasser might have relied.

And 2dly I have Considered the Decree of Exception in the 1719 obtained at the Instance of Alex^r Earle of Home, ag^t the Trustees for the forefeited Estates, which gives an Additionall Security and Strength to the progress; It finds all the forsaid Lands to have Belongd to George Home of Whitefeilds, and to have forefeited to the Crown by his Attainder, and to belong to the Earle by the Clan Act: This gives the Earle an Absolute Legall Security to the Lands, ag^t all persons who might have pretended a better Right to the Lands, than the forefeited person; in respect that such pretender Neglected to Enter an Exception in the terms

and within the time Limited by the Act of Parlt; And as the Earle of Home hath Conveyd his Rights to Mr Ninian Home; Its humbly thought that Mr Home of Billy as having Right from his ffather, hath a Compleat title to all the forsaid Lands; And Mr Home is Entitled to apply to my Lord Home for a Charter of these Lands in the terms of the former Infeftments yrof, granted to Whitefield and his Authors; ffor neither the Decree of Exception nor the Disposition by the Earle of Home, Settle the Tenure by which the Lands were formerly held by George Home

3dly With respect to the Incumberances the Lands are Clearly Disburdened, of all Incumbrances not Claimd & affirmed by the Commissioners of the forefeited Estates, and that by express Act of Parlt, and which hath Strictly been Adhered to, by the Court of Session and the House of Peers

But 2do With respect to the Creditors Named in the Trust Disposition granted by Whitefeild in the 1713, Their

Debts are by that Disposition Made Incumberances upon the Estate, and this Incumberance was Confirmed by the Decree of Exception pronounced by the Court of Session, in favours of the Trustees in the 1719, whereby this Disposition is found a reall Security upon the Estate in favours of the Creditors, So that untill the Creditors are paid the purchasser from the Earle of Home is Lyable to their Debts Especially that the Earles Conveyance is expresly qualified with this Trust Right

But if all these Debts have been Transacted by Mr Ninian Home, In that Case I apprehend his Sons title to the Estate is Unexceptionable; My Lord Homes Conveyance is a Compleat Legall Right to the Estate, and the Evidence that will be pre:served of his having paid the Debts of the forefeited person, and having obtaind Discharges from the Creditors, and his having Compleated for the Cases to Whitefields eldest Son, will be permanent Documents of his equitable Right to the Estate.

And as to the Observation That

4 Whitefeild had an Heritable Right to the Teinds, but which was not Claimd by the Earle of Home, nor was it Disponed to the Trustees for the Creditors: Its humbly thought that the Words of Whitefeilds Desposition to his Trustees are Broad enough to Comprehend the Teinds, and its to be Expected that the Earle of Home who hath Conveyd the Right to his vassals foresfeiture for the behooff of his Heir and his Creditors, to which they had no Antecedent Right, that he will not refuse, when he comes to give Billy a Charter of his Lands, to grant him an express Right to his Teinds, as the Earle was formerly Denuded of those Teinds by Despo:sitions in favours of Whitefeild the forefeited person

Rot: Craigie

Memorandum for Mr Home of Billy

It will appear by Whitfields propossalls herewith given in That Mr Ninian Home was to have ane heretable right to the Teinds of the haill lands thereby proposed to be sold, That it also appears Whitfield had right by three Dispositions from the Earle of Home in Aprille 1713 to the Teinds of the haill of said lands except Hornend a small Farme about fyve or sixe pound Sterling of yearly Rent, By Whitfields Disposition to his Creditors in June 1713 He Dispones the lands but not the Teinds and the Earle of Home only as Superior Claimed the lands ~~and~~ Rent not the Teinds And his Lop has by his Disposition to Mr Ninian ~~only~~ Disponed the lands & Rent not the Teinds

Edr. 2 Aprile 1753 This Memoriall is referrd to in a Memoriall Signed by me of this date

Robt. Frayne

Memoriall
from
Mr Home of Billy

1753

Ed^r 2 Aprile 1753.

Answers to the Memoriall & Querie for Mr Home of Billy

I have Considered the Memoriall & Queries, which are on a paper apart, and to which relation is hereby had And its Answered

In the 1st place, Its humbly thought That Mr Home Runs no Danger of forefeiting his Right to the Entaild Estate, thro the delay of Making up his Titles - My reason is That the Intention of such a Clause is only to prevent the Casualties of Nonentry, from being Made Use of to defeat the Entail, and therefore while there is no danger this way, an Entery to the Lands quandocunque will purge the Irritancy. And 2dly It does not appear to me, That there is any Irritancy in the present Tailzie, Adjected to the not Timeous Entery to the Lands, nor is it Common to Adject such Irritancy, because the Nonentry may not be Occasioned thro the fault of the Vassall, but of the Superior; And therefore, tho I think its very Improper for any proprietar, to Neglect or delay the Making up titles to his Lands with all Convenient Dilligence, yet I think there is nothing peculiar

in the present Case

2do With respect to the Danger apprehended from the Superiors Improbation, Neither do I think, will this Bring any Immediate Obligation upon Mr Home to Compleat his own Titles, Because the production of his Authors Infeftments granted by the Superior, will Exclude the Improbation Brought by the Singular Succeſsor in the Superiority.

3dly With respect to the particular Description of the Lands ment.d in Linthills Disposition, It does Create some perplexity and which cannot be Removed, without Knowing the Lands Intended by the Descriptions, which can only be Known by the poſseſsion; ffor instance it appears very probable, what is Suggested in the Memoriall, that what is now Called the Mains of Linthill, was formerly Called Blackhill; and if this is so there will be no difficulty in expeding the Titles, the Diſposition of the Mains of Linthill formerly Called Blackhill, will be a proper Warrant for an Infeftment, upon the Procry

3. granted by the Heretor of Blackhills which hath not been Executed.

4thly With respect to the Roods Butts & Acres, that were formerly Separate Tenements, Its probable they are now possest with part of the Husband Lands, and it is very Improper to Keep them Longer as Separate Tenements, but it would be proper to pull them in, Expressing them as pertinents of Lands holden of the same Superior, with which they are now possest, Because its Impossible to keep up the Boundings of these Butts and Acres, otherwise than by the possession, Especially where the Husband Lands possibly Lye Runrig with other Lands in the same Village.

And with respect to Eymouth Loanhead, I apprehend its Morally Certain that its part of the Mains of Blackhill now Called Linthill; However as I have said these Lands must be Described by the present possession, ~~mentioe~~ and the Modern names, Mentioning that they are the same that are Containd in the old Infeftments & passing by the Antient names Rob: Craigie

Answers to the Mem.^l &
Queries for
Mr. Home of Billy
2 Aprile 1753

J. R. Craigie

the Designation of Linthill

By Disposition from Wm Home of Jannewood to Alexr Home of Linthill Dated Novr 1665 It appears the Said Wm Home Disponed to the Said Alexander Home All and Haill the six Husband Lands of Blackhill Mannor place and haill pertinents yrof And the Teinds of the Samen But this is not in Terms of Linthills Disposition to Wm Home, Nor Does it appear that either the Father or Son was infeft in these Lands

From the above State of the Taillie and titles to the Lands Taillied the Memorialist wants to be advised how and in what manner he should make up titles that he may be thereupon Infeft in the haill of the Taillied Lands And as The Tailler stood publickly infeft in Some of the Subjects as also Linthill was infeft in part of the Subjects as above he wants to know if he should ~~with the~~ first oppertunity obtain himself infeft in these without waiting till titles are made up to Such parts as Seem to be Some in progress as above mentiond

In this the Memorialist is the more anxious as he is apprehensive of a ~~some~~ process of Reduction & Improbation & Nonentry at the instance of Troller of Mortonhall who lately purchased the Estate of Eymouth and thereby is Superior of part of the Taillied Lands, Being apprehensive that in case of any such process he should Incurr the Irritancy in the Taillie for not being timeously entered and Suffering the Lands to Lye in Nonentry

Edr 2 Aprile 1753 This is the Memorial to which my Answers of this date referr. Rt Craigie

Memoriall for
Mr. Home of Billy

1753